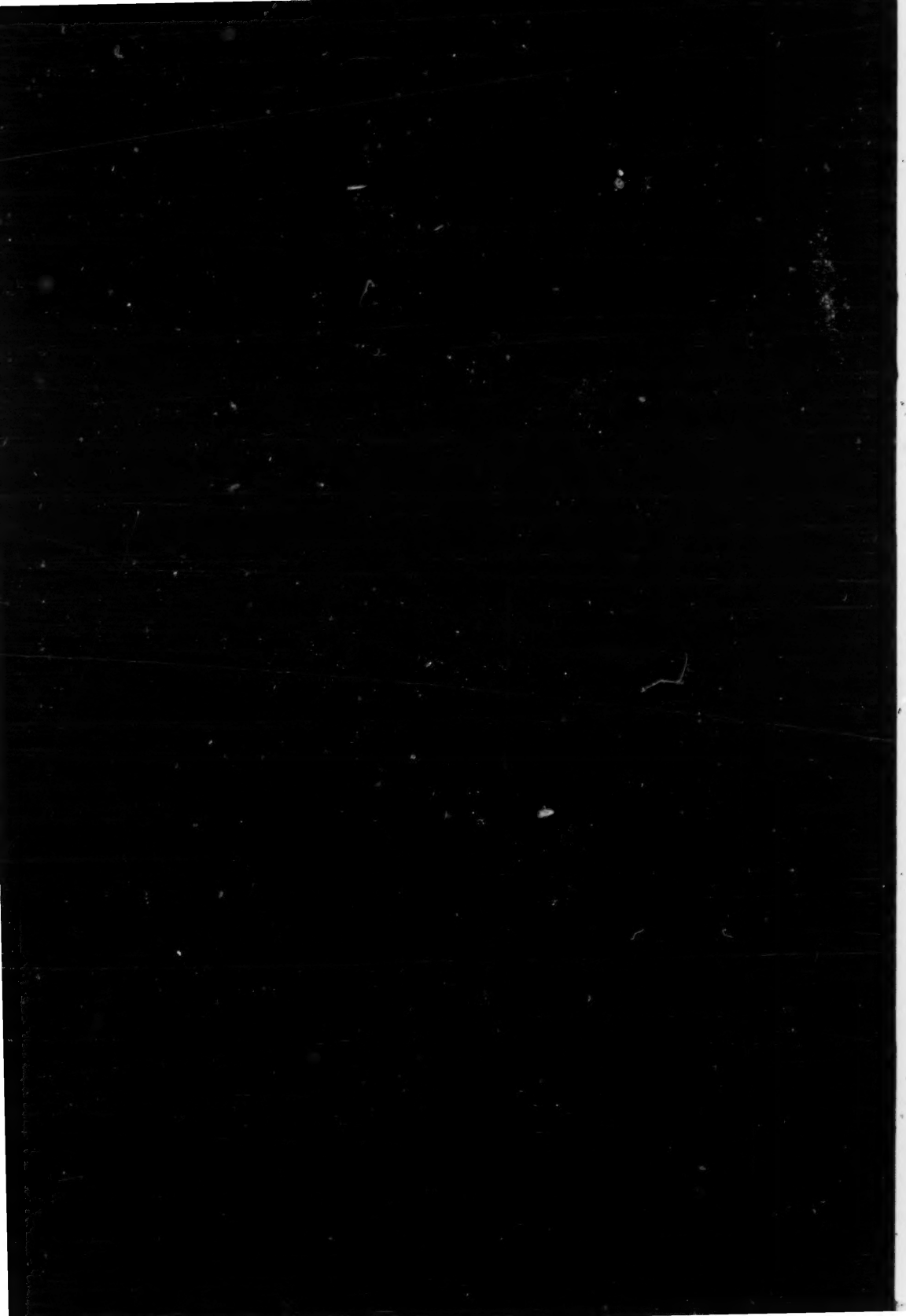

IN THE

Supreme Court of the United States

No. 1040

NORFOLK MONUMENT COMPANY, INC.,
Petitioner,

V.

WOODLAWN MEMORIAL GARDENS, INCORPORATED,
ROSEWOOD MEMORIAL PARK, INCORPORATED,
GREENLAWN CEMETERY PARK CORPORATION,
ROOSEVELT MEMORIAL PARK AND CEMETERY CORPORATION,
PRINCESS ANNE MEMORIAL PARK, INCORPORATED,
JAS. H. MATTHEWS & CO. OF VIRGINIA,
and JAS. H. MATHEWS & CO.,
Respondents.

BRIEF OF ROSEWOOD MEMORIAL PARK, INCORPORATED, PRINCESS ANNE MEMORIAL PARK, INCORPORATED AND GREENLAWN CEMETERY PARK CORPORATION IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COUR OF APPEALS FOR THE FOURTH CIRCUIT

QUESTIONS PRESENTED

The petition for a writ of certiorari has presented no questions for review of which this Court should take cognizance.

STATEMENT OF THE CASE

Certiorari is sought by the petitioner, plaintiff below, from the judgment of the Court of Appeals for the Fourth Circuit in affirming the action of the United States District Court for the Eastern District of Virginia in granting defendants' motion for summary judgment.

The facts of the case have been stated by the majority opinion of the Court of Appeals of the Fourth Circuit which appears as Appedix A of petitioner's brief, and the memorandum opinion of the Judge of the United States District Court, which appears as Appendix D of petitioner's brief.

ARGUMENT

This case has been carefully examined and analyzed by the United States District Court for the Eastern District of Virginia and by the United States Court of Appeals for the Fourth Circuit. Both Courts have found that no cause of action existed under the facts presented, though the plaintiff was ordered by the District Court to produce his case, and both Courts have held that the motions for summary judgment should be and were properly sustained.

The facts of the case have been adequately stated in the opinions of the District Court, found in Appendix D to the petitioner's brief, and the majority opinion of the Fourth Circuit Court of Appeals, found in Appendix A of the petitioner's brief. No purpose will be served by restating the facts here.

Suffice it to say that there has been sufficient attention and consideration given this case both by the

District Court and the Court of Appeals. While the petition for a writ of certiorari argues the merits of the case and the propriety of the motion for summary judgment, as it did twice before in the lower Courts, the petition is absolutely devoid of any reason why these decisions should be reviewed in the Supreme Court of the United States, other than the fact that they were adverse to the petitioner. Patently, this is not sufficient reason for review.

The petitioner has not brought itself within the purview of Sup. Ct. Rule 19, 28 U.S.C.A. While review on certiorari is discretionary, Sup. Ct. Rule 19 (b) outlines the considerations governing review on certiorari from a United States Court of Appeals. The decision of the United States Court of Appeals for the Fourth Circuit in this case is not in conflict with the decision of another Court of Appeals on the same matter; no important state or territorial decision is involved; no important question of federal law is involved which has not been but should be settled by this Court; the decisions of the lower Courts do not conflict with the applicable decisions of this Court, nor do they depart from the accepted and usual course of judicial proceedings. Thus the petitioner has not brought itself within the purview of Sup. Ct. Rule 19. Indeed the petition for a writ of certiorari does not suggest the contrary.

The most that can be said for this petitioner is that, having failed to prevail in two careful and thorough reviews by separate judicial forums, it now seeks review by a third hoping the latter will disagree with the former two. This is not sufficient ground for review and the writ of error should be denied.

CONCLUSION

This case presents no question for review and the writ should be denied.

Respectfully submitted,

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/s/JEFFERSON B. BROWN

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon the following by depositing a copy in the United States mail with first class postage prepaid addressed to each counsel of record at his office address:

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on the 12th day of March, 1969.

/s/WILLIAM C. WORTHINGTON
/s/JEFFERSON B. BROWN